

GERAGOS & GERAGOS

A PROFESSIONAL CORPORATION
LAWYERS
644 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3411
TELEPHONE (213) 625-3900
FACSIMILE (213) 232-3255
GERAGOS@GERAGOS.COM

December 17, 2020

By ECF and fax

Hon. P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *In Re: Fyre Festival Litigation, Civil Action No. 1:17-cv-03296 (PKC)*
Letter Brief Re (1) Request for Leave to Amend, (2) Request to File Motion for
Reconsideration, and (3) Request for Transfer Based on Lack of Subject Matter
Jurisdiction

Dear Judge Castel:

In connection with the Court's December 1, 2020 Order (Dkt. 124) we submit this letter to address the following: (1) Request to Amend our Operative Second Amended Consolidated Class Action Complaint; (2) Our concurrently filed Motion for Reconsideration and in the Alternative Motion for Leave to Amend , and (3) Request to Brief the issue of transfer for lack of subject matter jurisdiction in event class certification is denied.

First, we write to request the opportunity to Amend the Operative Second Amended Consolidated Class Action Complaint to clarify certain issues addressed in the Court's Order. Specifically, Daniel Jung, the putative class representative is a United States resident and not a resident of the Netherlands as stated in the Court's Order. Because of the unique posture of this case, with its MDL transfer and the incarceration of the Defendant, the passing of time since this case was originally filed in the Central District of California was such that Mr. Jung temporarily relocated in the Netherlands. Mr. Jung plans to return after the COVID pandemic. We can make this clearer if we amend the complaint. Alternatively, if the Court still believes Mr. Jung's temporary departure from the United

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States renders him not capable of being a class representative, we request the opportunity to add a new class representative from the hundreds of victims we have been in communication with. We are confident that an Amended Complaint can also address any inadequacies in the pleadings identified by the Court. We can submit an Amended Complaint within 10 days of any Court Order permitting us to do so. We also address the request to amend the complaint in the motion concurrently filed with this letter.

Second, we would also like to address the Motion for Reconsideration concurrently filed with this letter to the Court. The law clerk assigned to this matter calendared the Motion for Reconsideration date for filing today. The miscommunication stemmed from myself and others working remotely during COVID and myself and others adapting with our systems through these uncertain and complicated times resulting in a calendaring error. We apologize for the late filing but do believe the substance of the motion addresses critical issues for the Court's further evaluation such as Mr. Jung's residency in the United States and the fact that default motion was filed on behalf of the "Judgment Class" and not simply Mr. Jung and the declarants to the default judgment motion.

Third and finally, to the extent the relief above to amend the complaint or reconsider the Court's Order is not granted, we request the opportunity to brief the issue of the Court's continued subject matter jurisdiction over the case. If indeed the class allegations are dismissed, it is our understanding that would divest the Court of jurisdiction as the Transferee Court under the MDL process as jurisdiction is pursuant to the Class Action Fairness Act. Each of the individual putative class members' claims are below \$75,000.00 each and thus there would not be diversity jurisdiction as well. It is our understanding the matter would be transferred back to the transferring Courts and then likely remanded depending on if an appeal is filed.¹

¹ If this Motion for Reconsideration and or in the Alternative Leave to Amend is not granted, we request clarification as to whether the class certification is denied, in which case potential jurisdictional issues would come into play. As noted in our letter brief, this matter was transferred via MDL with jurisdiction premised on the Class Action Fairness Act as each of the individual claims do not exceed \$75,000 each and there would be no complete diversity.

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We appreciate your attention to these matters.

Very truly yours,

/s/ Benjamin J. Meiselas

Benjamin J. Meiselas
Attorney for Plaintiffs
GERAGOS & GERAGOS